



January 30, 2006

SENATE BILL No. 356

DIGEST OF SB 356 (Updated January 26, 2006 12:50 pm - DI 110)

Citations Affected: IC 27-4; IC 27-8; IC 34-30.

Synopsis: Viatical settlements. Makes a violation of the chapter concerning viatical settlements an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. Specifies applicability of the law when a policy is owned by more than one person. Establishes certain requirements for viatical settlement brokers, viatical settlement providers, and insurers, including requirements concerning licensure, reporting, record keeping, examinations, confidentiality, liability for certain actions, financing, advertising, and viatical settlement of a policy less than two years after issuance. Specifies requirements when the insured has a "terminal illness or chronic illness", rather than a "catastrophic or life threatening illness". Repeals a definition of "viatical settlement agent" and a provision prohibiting an insurance producer from receiving a commission in connection with viatical settlement of a policy less than two years after the insurance producer's sale of the policy.

Effective: July 1, 2006.

Steele, Young R Michael

January 10, 2006, read first time and referred to Committee on Insurance and Financial Institutions.
January 30, 2006, amended, reported favorably — Do Pass.

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SB 356—LS 6970/DI 97+



January 30, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

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SENATE BILL No. 356



A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-4-1-4, AS AMENDED BY P.L.39-2005,
2 SECTION 2, AND AS AMENDED BY P.L.138-2005, SECTION 1, IS
3 CORRECTED AND AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2006]: Sec. 4. The following are hereby defined
5 as unfair methods of competition and unfair and deceptive acts and
6 practices in the business of insurance:

- 7 (1) Making, issuing, circulating, or causing to be made, issued, or
- 8 circulated, any estimate, illustration, circular, or statement:
 - 9 (A) misrepresenting the terms of any policy issued or to be
 - 10 issued or the benefits or advantages promised thereby or the
 - 11 dividends or share of the surplus to be received thereon;
 - 12 (B) making any false or misleading statement as to the
 - 13 dividends or share of surplus previously paid on similar
 - 14 policies;
 - 15 (C) making any misleading representation or any
 - 16 misrepresentation as to the financial condition of any insurer,
 - 17 or as to the legal reserve system upon which any life insurer

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1 operates;
 2 (D) using any name or title of any policy or class of policies
 3 misrepresenting the true nature thereof; or
 4 (E) making any misrepresentation to any policyholder insured
 5 in any company for the purpose of inducing or tending to
 6 induce such policyholder to lapse, forfeit, or surrender the
 7 policyholder's insurance.
 8 (2) Making, publishing, disseminating, circulating, or placing
 9 before the public, or causing, directly or indirectly, to be made,
 10 published, disseminated, circulated, or placed before the public,
 11 in a newspaper, magazine, or other publication, or in the form of
 12 a notice, circular, pamphlet, letter, or poster, or over any radio or
 13 television station, or in any other way, an advertisement,
 14 announcement, or statement containing any assertion,
 15 representation, or statement with respect to any person in the
 16 conduct of the person's insurance business, which is untrue,
 17 deceptive, or misleading.
 18 (3) Making, publishing, disseminating, or circulating, directly or
 19 indirectly, or aiding, abetting, or encouraging the making,
 20 publishing, disseminating, or circulating of any oral or written
 21 statement or any pamphlet, circular, article, or literature which is
 22 false, or maliciously critical of or derogatory to the financial
 23 condition of an insurer, and which is calculated to injure any
 24 person engaged in the business of insurance.
 25 (4) Entering into any agreement to commit, or individually or by
 26 a concerted action committing any act of boycott, coercion, or
 27 intimidation resulting or tending to result in unreasonable
 28 restraint of, or a monopoly in, the business of insurance.
 29 (5) Filing with any supervisory or other public official, or making,
 30 publishing, disseminating, circulating, or delivering to any person,
 31 or placing before the public, or causing directly or indirectly, to
 32 be made, published, disseminated, circulated, delivered to any
 33 person, or placed before the public, any false statement of
 34 financial condition of an insurer with intent to deceive. Making
 35 any false entry in any book, report, or statement of any insurer
 36 with intent to deceive any agent or examiner lawfully appointed
 37 to examine into its condition or into any of its affairs, or any
 38 public official to which such insurer is required by law to report,
 39 or which has authority by law to examine into its condition or into
 40 any of its affairs, or, with like intent, willfully omitting to make a
 41 true entry of any material fact pertaining to the business of such
 42 insurer in any book, report, or statement of such insurer.

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1 (6) Issuing or delivering or permitting agents, officers, or
 2 employees to issue or deliver, agency company stock or other
 3 capital stock, or benefit certificates or shares in any common law
 4 corporation, or securities or any special or advisory board
 5 contracts or other contracts of any kind promising returns and
 6 profits as an inducement to insurance.

7 (7) Making or permitting any of the following:

8 (A) Unfair discrimination between individuals of the same
 9 class and equal expectation of life in the rates or assessments
 10 charged for any contract of life insurance or of life annuity or
 11 in the dividends or other benefits payable thereon, or in any
 12 other of the terms and conditions of such contract; however, in
 13 determining the class, consideration may be given to the
 14 nature of the risk, plan of insurance, the actual or expected
 15 expense of conducting the business, or any other relevant
 16 factor.

17 (B) Unfair discrimination between individuals of the same
 18 class involving essentially the same hazards in the amount of
 19 premium, policy fees, assessments, or rates charged or made
 20 for any policy or contract of accident or health insurance or in
 21 the benefits payable thereunder, or in any of the terms or
 22 conditions of such contract, or in any other manner whatever;
 23 however, in determining the class, consideration may be given
 24 to the nature of the risk, the plan of insurance, the actual or
 25 expected expense of conducting the business, or any other
 26 relevant factor.

27 (C) Excessive or inadequate charges for premiums, policy
 28 fees, assessments, or rates, or making or permitting any unfair
 29 discrimination between persons of the same class involving
 30 essentially the same hazards, in the amount of premiums,
 31 policy fees, assessments, or rates charged or made for:

32 (i) policies or contracts of reinsurance or joint reinsurance,
 33 or abstract and title insurance;

34 (ii) policies or contracts of insurance against loss or damage
 35 to aircraft, or against liability arising out of the ownership,
 36 maintenance, or use of any aircraft, or of vessels or craft,
 37 their cargoes, marine builders' risks, marine protection and
 38 indemnity, or other risks commonly insured under marine,
 39 as distinguished from inland marine, insurance; or

40 (iii) policies or contracts of any other kind or kinds of
 41 insurance whatsoever.

42 However, nothing contained in clause (C) shall be construed to

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1 apply to any of the kinds of insurance referred to in clauses (A)
 2 and (B) nor to reinsurance in relation to such kinds of insurance.
 3 Nothing in clause (A), (B), or (C) shall be construed as making or
 4 permitting any excessive, inadequate, or unfairly discriminatory
 5 charge or rate or any charge or rate determined by the department
 6 or commissioner to meet the requirements of any other insurance
 7 rate regulatory law of this state.

8 (8) Except as otherwise expressly provided by law, knowingly
 9 permitting or offering to make or making any contract or policy
 10 of insurance of any kind or kinds whatsoever, including but not in
 11 limitation, life annuities, or agreement as to such contract or
 12 policy other than as plainly expressed in such contract or policy
 13 issued thereon, or paying or allowing, or giving or offering to pay,
 14 allow, or give, directly or indirectly, as inducement to such
 15 insurance, or annuity, any rebate of premiums payable on the
 16 contract, or any special favor or advantage in the dividends,
 17 savings, or other benefits thereon, or any valuable consideration
 18 or inducement whatever not specified in the contract or policy; or
 19 giving, or selling, or purchasing or offering to give, sell, or
 20 purchase as inducement to such insurance or annuity or in
 21 connection therewith, any stocks, bonds, or other securities of any
 22 insurance company or other corporation, association, limited
 23 liability company, or partnership, or any dividends, savings, or
 24 profits accrued thereon, or anything of value whatsoever not
 25 specified in the contract. Nothing in this subdivision and
 26 subdivision (7) shall be construed as including within the
 27 definition of discrimination or rebates any of the following
 28 practices:

- 29 (A) Paying bonuses to policyholders or otherwise abating their
- 30 premiums in whole or in part out of surplus accumulated from
- 31 nonparticipating insurance, so long as any such bonuses or
- 32 abatement of premiums are fair and equitable to policyholders
- 33 and for the best interests of the company and its policyholders.
- 34 (B) In the case of life insurance policies issued on the
- 35 industrial debit plan, making allowance to policyholders who
- 36 have continuously for a specified period made premium
- 37 payments directly to an office of the insurer in an amount
- 38 which fairly represents the saving in collection expense.
- 39 (C) Readjustment of the rate of premium for a group insurance
- 40 policy based on the loss or expense experience thereunder, at
- 41 the end of the first year or of any subsequent year of insurance
- 42 thereunder, which may be made retroactive only for such

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policy year.
(D) Paying by an insurer or insurance producer thereof duly licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed insurance producer thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, an insurance producer, or a solicitor duly licensed under the laws of this state, but such broker, insurance producer, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.
(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance producer or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of the lender's right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.
(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.
(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of insurance producers or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.
(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular

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1 insurance company, insurance producer, or broker or brokers.
 2 However, this subdivision shall not prevent the exercise by any
 3 seller of such property or the one making a loan thereon of the
 4 right to approve or disapprove of the insurance company selected
 5 by the buyer to underwrite the insurance.
 6 (13) Issuing, offering, or participating in a plan to issue or offer,
 7 any policy or certificate of insurance of any kind or character as
 8 an inducement to the purchase of any property, real, personal, or
 9 mixed, or services of any kind, where a charge to the insured is
 10 not made for and on account of such policy or certificate of
 11 insurance. However, this subdivision shall not apply to any of the
 12 following:
 13 (A) Insurance issued to credit unions or members of credit
 14 unions in connection with the purchase of shares in such credit
 15 unions.
 16 (B) Insurance employed as a means of guaranteeing the
 17 performance of goods and designed to benefit the purchasers
 18 or users of such goods.
 19 (C) Title insurance.
 20 (D) Insurance written in connection with an indebtedness and
 21 intended as a means of repaying such indebtedness in the
 22 event of the death or disability of the insured.
 23 (E) Insurance provided by or through motorists service clubs
 24 or associations.
 25 (F) Insurance that is provided to the purchaser or holder of an
 26 air transportation ticket and that:
 27 (i) insures against death or nonfatal injury that occurs during
 28 the flight to which the ticket relates;
 29 (ii) insures against personal injury or property damage that
 30 occurs during travel to or from the airport in a common
 31 carrier immediately before or after the flight;
 32 (iii) insures against baggage loss during the flight to which
 33 the ticket relates; or
 34 (iv) insures against a flight cancellation to which the ticket
 35 relates.
 36 (14) Refusing, because of the for-profit status of a hospital or
 37 medical facility, to make payments otherwise required to be made
 38 under a contract or policy of insurance for charges incurred by an
 39 insured in such a for-profit hospital or other for-profit medical
 40 facility licensed by the state department of health.
 41 (15) Refusing to insure an individual, refusing to continue to issue
 42 insurance to an individual, limiting the amount, extent, or kind of

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1 coverage available to an individual, or charging an individual a
 2 different rate for the same coverage, solely because of that
 3 individual's blindness or partial blindness, except where the
 4 refusal, limitation, or rate differential is based on sound actuarial
 5 principles or is related to actual or reasonably anticipated
 6 experience.

7 (16) Committing or performing, with such frequency as to
 8 indicate a general practice, unfair claim settlement practices (as
 9 defined in section 4.5 of this chapter).

10 (17) Between policy renewal dates, unilaterally canceling an
 11 individual's coverage under an individual or group health
 12 insurance policy solely because of the individual's medical or
 13 physical condition.

14 (18) Using a policy form or rider that would permit a cancellation
 15 of coverage as described in subdivision (17).

16 (19) Violating IC 27-1-22-25, ~~or~~ IC 27-1-22-26, or
 17 IC 27-1-22-26.1 concerning motor vehicle insurance rates.

18 (20) Violating IC 27-8-21-2 concerning advertisements referring
 19 to interest rate guarantees.

20 (21) Violating IC 27-8-24.3 concerning insurance and health plan
 21 coverage for victims of abuse.

22 (22) Violating IC 27-8-26 concerning genetic screening or testing.

23 (23) Violating IC 27-1-15.6-3(b) concerning licensure of
 24 insurance producers.

25 (24) Violating IC 27-1-38 concerning depository institutions.

26 (25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning
 27 the resolution of an appealed grievance decision.

28 (26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or
 29 IC 27-8-5-19.2.

30 (27) Violating IC 27-2-21 concerning use of credit information.

31 (28) *Violating IC 27-4-9-3 concerning recommendations to*
 32 *senior consumers.*

33 **(29) Violating IC 27-8-19.8 concerning viatical settlements.**

34 SECTION 2. IC 27-8-19.8-0.5 IS ADDED TO THE INDIANA
 35 CODE AS A NEW SECTION TO READ AS FOLLOWS
 36 [EFFECTIVE JULY 1, 2006]: **Sec. 0.5. As used in this chapter,**

37 **"advertising" means:**

38 **(1) written, electronic, or printed communication; or**

39 **(2) communication:**

40 **(A) by means of a recorded telephone message; or**

41 **(B) transmitted on radio, television, the Internet, or similar**
 42 **communications media;**

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1 including a film strip, motion picture, or video;
2 that is published, disseminated, circulated, or placed directly
3 before the public in Indiana to create an interest in or induce a
4 person to sell, assign, devise, bequest, or transfer the death benefit
5 or ownership of a policy under a viatical settlement contract.

6 SECTION 3. IC 27-8-19.8-1.5 IS ADDED TO THE INDIANA
7 CODE AS A NEW SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2006]: **Sec. 1.5. As used in this chapter,**
9 **"business of viatical settlements" means an activity related to the:**

- 10 (1) offer;
- 11 (2) solicitation;
- 12 (3) negotiation;
- 13 (4) procurement;
- 14 (5) effectuation;
- 15 (6) purchase;
- 16 (7) investment;
- 17 (8) financing;
- 18 (9) monitoring;
- 19 (10) tracking;
- 20 (11) underwriting;
- 21 (12) sale;
- 22 (13) transfer;
- 23 (14) assignment;
- 24 (15) pledge; or
- 25 (16) hypothecation;

26 of a viatical settlement contract.

27 SECTION 4. IC 27-8-19.8-1.7 IS ADDED TO THE INDIANA
28 CODE AS A NEW SECTION TO READ AS FOLLOWS
29 [EFFECTIVE JULY 1, 2006]: **Sec. 1.7. As used in this chapter,**
30 **"chronic illness" means an illness or condition that causes an**
31 **individual to:**

- 32 (1) be unable to perform at least two (2) activities of daily
33 living, including eating, toileting, transferring, bathing,
34 dressing, or continence;
- 35 (2) require substantial supervision to protect the individual
36 from a threat to health and safety due to severe cognitive
37 impairment; or
- 38 (3) have a level of disability similar to the level of disability
39 described in subdivision (1), as determined by the secretary of
40 the United States Department of Health and Human Services.

41 SECTION 5. IC 27-8-19.8-1.8 IS ADDED TO THE INDIANA
42 CODE AS A NEW SECTION TO READ AS FOLLOWS

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1 [EFFECTIVE JULY 1, 2006]: **Sec. 1.8. As used in this chapter,**
2 **"commissioner" refers to the insurance commissioner appointed**
3 **under IC 27-1-1-2.**

4 SECTION 6. IC 27-8-19.8-2.4 IS ADDED TO THE INDIANA
5 CODE AS A NEW SECTION TO READ AS FOLLOWS
6 [EFFECTIVE JULY 1, 2006]: **Sec. 2.4. (a) As used in this chapter,**
7 **"financing entity" means an underwriter, a placement agent, a**
8 **lender, a purchaser of securities, a purchaser of a policy or**
9 **certificate from a viatical settlement provider, a credit enhancer,**
10 **or an entity that has a direct ownership in a policy that is the**
11 **subject of a viatical settlement contract:**

12 (1) **whose principal activity related to the viatical settlement**
13 **is providing funds to effect the viatical settlement or purchase**
14 **of a viaticated policy; and**

15 (2) **who has an agreement in writing with a licensed viatical**
16 **settlement provider to:**

17 (A) **finance the acquisition of a viatical settlement contract;**
18 **or**

19 (B) **provide stop loss insurance.**

20 (b) **The term does not include a nonaccredited investor.**

21 SECTION 7. IC 27-8-19.8-2.5 IS ADDED TO THE INDIANA
22 CODE AS A NEW SECTION TO READ AS FOLLOWS
23 [EFFECTIVE JULY 1, 2006]: **Sec. 2.5. As used in this chapter,**
24 **"fraudulent viatical settlement act" includes the following:**

25 (1) **An act or omission committed by a person who, knowingly**
26 **or with intent to defraud, for the purpose of depriving**
27 **another person of property or for pecuniary gain commits, or**
28 **permits the person's employees or agents to engage in acts,**
29 **including the following:**

30 (A) **Presenting, causing to be presented, or preparing with**
31 **knowledge or belief that it will be presented to or by a**
32 **viatical settlement provider, viatical settlement broker,**
33 **financing entity, insurer, insurance producer, or another**
34 **person, false material information, or concealing material**
35 **information, as part of, in support of, or concerning a fact**
36 **material to one (1) or more of the following:**

37 (i) **An application for the issuance of a policy or viatical**
38 **settlement contract.**

39 (ii) **The underwriting of a policy or viatical settlement**
40 **contract.**

41 (iii) **A claim for payment or benefit under a policy or**
42 **viatical settlement contract.**

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- 1 (iv) Premiums paid on a policy.
- 2 (v) Payments and changes in ownership or beneficiary
- 3 made in accordance with the terms of a policy or viatical
- 4 settlement contract.
- 5 (vi) The reinstatement or conversion of a policy.
- 6 (vii) The solicitation, offer, effectuation, or sale of a
- 7 viatical settlement contract.
- 8 (viii) The issuance of written evidence of a policy or
- 9 viatical settlement contract.
- 10 (ix) A financing transaction.
- 11 (B) Employing a device, a scheme, or an artifice to defraud
- 12 related to a viaticated policy.
- 13 (2) In the furtherance of a fraud or to prevent the detection of
- 14 a fraud, committing or permitting the person's employees or
- 15 agents to do one (1) or more of the following:
- 16 (A) Remove, conceal, alter, destroy, or sequester from the
- 17 commissioner the assets or records of a licensee or another
- 18 person engaged in the business of viatical settlements.
- 19 (B) Misrepresent or conceal the financial condition of a
- 20 licensee, a financing entity, an insurer, or another person.
- 21 (C) Transact the business of viatical settlements in
- 22 violation of laws requiring a license, a certificate of
- 23 authority, or another legal authority for the transaction of
- 24 the business of viatical settlements.
- 25 (D) File with the commissioner or the chief insurance
- 26 regulatory official of another jurisdiction a document
- 27 containing false information or otherwise conceal from the
- 28 commissioner information about a material fact.
- 29 (3) Embezzlement, theft, misappropriation, or conversion of
- 30 money, funds, premiums, credits, or other property of a
- 31 viatical settlement provider, a viatical settlement broker, an
- 32 insurance producer, an insurer, an insured, a viator, a policy
- 33 owner, or another person engaged in the business of viatical
- 34 settlements or the business of insurance.
- 35 (4) Recklessly entering into, negotiating, or otherwise dealing
- 36 in a viatical settlement contract, the subject of which is a
- 37 policy that was obtained by:
- 38 (A) presenting false information concerning a fact material
- 39 to the policy; or
- 40 (B) concealing, for the purpose of misleading another,
- 41 information concerning a fact material to the policy;
- 42 where the viator or the viator's agent intended to defraud the

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insurer that issued the policy.
(5) Facilitating the change of state of residency of a policy or a viator to avoid compliance with this chapter.
(6) Attempting to commit, assist, aid, or abet in the commission of, or conspiracy to commit, one (1) or more of the acts or omissions described in subdivisions (1) through (5).

SECTION 8. IC 27-8-19.8-3, AS AMENDED BY P.L.223-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. As used in this chapter, "insured" refers to an individual whose life is the subject of insurance under a ~~life insurance policy. or contract.~~

SECTION 9. IC 27-8-19.8-3.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 3.2. As used in this chapter, "licensee" refers to the following:**

- (1) A viatical settlement provider that is licensed under this chapter.**
- (2) A person that is authorized under section 8.5 of this chapter to act as a viatical settlement broker.**

SECTION 10. IC 27-8-19.8-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 3.5. As used in this chapter, "NAIC" refers to the National Association of Insurance Commissioners.**

SECTION 11. IC 27-8-19.8-3.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 3.6. As used in this chapter, "policy" means an individual policy, a group policy, a group certificate, a contract, or an arrangement of life insurance that:**

- (1) affects the rights of an Indiana resident; or**
 - (2) has a reasonable relation to Indiana;**
- regardless of whether the policy, certificate, contract, or arrangement is delivered or issued for delivery in Indiana.**

SECTION 12. IC 27-8-19.8-3.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 3.7. As used in this chapter, "recklessly" means:**

- (1) in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of relevant facts or risks; and**
- (2) involving a gross deviation from acceptable standards of conduct.**

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1 SECTION 13. IC 27-8-19.8-3.8 IS ADDED TO THE INDIANA
2 CODE AS A NEW SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2006]: **Sec. 3.8. As used in this chapter,**
4 **"related provider trust" means a titling trust or another trust:**

5 (1) **that was established by a viatical settlement provider or a**
6 **financing entity for the sole purpose of holding the ownership**
7 **or beneficial interest in a viaticated policy in connection with**
8 **a transaction for the financing of a viatical settlement**
9 **contract; and**

10 (2) **that has a written agreement with a viatical settlement**
11 **provider under which:**

12 (A) **the viatical settlement provider is responsible for**
13 **ensuring compliance with legal requirements; and**

14 (B) **the trust agrees to make all records and files related to**
15 **transactions concerning viatical settlement contracts**
16 **available to the commissioner as if those records and files**
17 **were maintained directly by the viatical settlement**
18 **provider.**

19 SECTION 14. IC 27-8-19.8-3.9 IS ADDED TO THE INDIANA
20 CODE AS A NEW SECTION TO READ AS FOLLOWS
21 [EFFECTIVE JULY 1, 2006]: **Sec. 3.9. As used in this chapter,**
22 **"special purpose entity" means a corporation, partnership, trust,**
23 **limited liability company, or similar entity formed only to directly**
24 **or indirectly provide access to institutional capital markets for a**
25 **financing entity or viatical settlement provider.**

26 SECTION 15. IC 27-8-19.8-4.1 IS ADDED TO THE INDIANA
27 CODE AS A NEW SECTION TO READ AS FOLLOWS
28 [EFFECTIVE JULY 1, 2006]: **Sec. 4.1. As used in this chapter,**
29 **"terminal illness" means an illness that is reasonably expected to**
30 **result in death in twenty-four (24) months or less.**

31 SECTION 16. IC 27-8-19.8-4.5 IS AMENDED TO READ AS
32 FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 4.5. As used in this**
33 **chapter, "viatical settlement broker" means a person that represents a**
34 **viator and, for a fee, commission, or other valuable consideration,**
35 **solicits, offers, or attempts to negotiate viatical settlements settlement**
36 **contracts between a viator and one (1) or more viatical settlement**
37 **providers.**

38 SECTION 17. IC 27-8-19.8-5 IS AMENDED TO READ AS
39 FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 5. (a) As used in this**
40 **chapter, "viatical settlement provider" means a person, other than a**
41 **viator, that**

42 (†) **enters into or effectuates a viatical settlement contract with**

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1 a viator. ~~or~~
2 (2) obtains financing for the purchase, acquisition, transfer, or
3 other assignment of one (1) or more viatical settlement contracts;
4 viaticated policies; or interests therein; or otherwise sells, assigns,
5 transfers, pledges, hypothecates, or disposes of one (1) or more
6 viatical settlement contracts, viaticated policies, or interests
7 therein;

- 8 (b) The term does not include any of the following:
9 (1) A bank, savings bank, savings association, credit union, or
10 other licensed lending institution that takes an assignment of a life
11 insurance policy as collateral for a loan.
12 (2) The issuer of a life insurance policy that makes a policy loan,
13 permits surrender of the policy, or pays other policy benefits,
14 including accelerated benefits, in accordance with the terms of the
15 policy.
16 (3) **An authorized or eligible insurer that provides stop loss**
17 **coverage to a viatical settlement provider, financing entity,**
18 **special purpose entity, or related provider trust.**
19 (4) **A financing entity.**
20 (5) **A special purpose entity.**
21 (6) **A related provider trust.**
22 (7) **An accredited investor or qualified institutional buyer (as**
23 **defined in Regulation D, Rule 501 or Rule 144A of the federal**
24 **Securities Act of 1933 (15 U.S.C. 77a -77aa)) that purchases a**
25 **viaticated policy from a viatical settlement provider.**

26 SECTION 18. IC 27-8-19.8-6 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. (a) As used in this
28 chapter, "viatical settlement contract" means ~~an~~ **a written** agreement
29 for the purchase, sale, assignment, transfer, devise, or bequest of a
30 portion of the death benefit or ownership of a life insurance policy or
31 contract for ~~consideration~~ **that establishes the terms under which**
32 **compensation or anything of value is paid for a policy, which**
33 **compensation or value** is less than the expected death benefit of the
34 life insurance policy, or ~~contract~~ **in return for the viator's**
35 **assignment, transfer, sale, devise, or bequest of the death benefit or**
36 **ownership of any part of the policy, regardless of the date on which**
37 **compensation is paid to the viator.**

- 38 (b) The term does not include the following:
39 (1) A loan by an insurer under the terms of a life insurance policy,
40 including a loan secured by the cash value of a policy.
41 (2) An agreement with a bank, savings bank, savings and loan
42 association, credit union, or other licensed lending institution that

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- 1 takes an assignment of a ~~life insurance~~ policy as collateral for a
- 2 loan.
- 3 (3) The provision of accelerated death benefits by an insurer to an
- 4 insured under the provisions of a ~~life insurance contract~~ **policy**.
- 5 (4) Agreements between an insurer and a reinsurer.
- 6 (5) An agreement by a person who enters into not more than one
- 7 (1) such agreement in any five (5) year period to:
- 8 (A) purchase a ~~life insurance~~ policy; or
- 9 (B) contract for the transfer of a ~~life insurance~~ policy;
- 10 for a value that is less than the expected death benefit.

11 SECTION 19. IC 27-8-19.8-6.5 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6.5. As used in this
 13 chapter, "viaticated policy" means a ~~life insurance~~ policy or ~~certificate~~
 14 that has been acquired by a viatical settlement provider under a viatical
 15 settlement contract.

16 SECTION 20. IC 27-8-19.8-8 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. (a) As used in this
 18 chapter, "viator" refers to the owner of a ~~life insurance~~ policy or a
 19 ~~certificate holder under a group policy that insures the life of an insured~~
 20 who enters or seeks to enter into a viatical settlement contract.

- 21 (b) **The term does not include the following:**
- 22 (1) **A viatical settlement provider as provided by this chapter,**
- 23 **including an insurance producer acting as a viatical**
- 24 **settlement broker.**
- 25 (2) **A qualified institutional buyer (as defined in Rule 144A of**
- 26 **the Federal Securities Act of 1933 (15 U.S.C. 77a-77aa)).**
- 27 (3) **A financing entity.**
- 28 (4) **A special purpose entity.**
- 29 (5) **A related provider trust.**

30 SECTION 21. IC 27-8-19.8-8.3 IS ADDED TO THE INDIANA
 31 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 32 [EFFECTIVE JULY 1, 2006]: **Sec. 8.3. If:**

- 33 (1) **there is more than one (1) owner of a single policy; and**
- 34 (2) **the owners of the policy are residents of different states;**
- 35 **a viatical settlement of the policy is governed by the law of the state**
- 36 **in which the owner having the largest percentage of ownership**
- 37 **resides or, if the owners hold equal ownership, the state of**
- 38 **residence of one (1) owner as agreed upon in writing by all owners.**

39 SECTION 22. IC 27-8-19.8-8.5 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8.5. ~~The following must~~
 41 ~~be licensed as an~~ (a) **Except as provided in section 8.6 of this**
 42 **chapter, only a:**

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1 **(1) licensed insurance producer with a life qualification under**
 2 **IC 27-1-15.6-7 who is a resident of Indiana; or**
 3 **(2) nonresident insurance producer who is licensed with a life**
 4 **qualification in another state;**
 5 **and who has been licensed with the life qualification in the**
 6 **insurance producer's home state for at least one (1) year may act**
 7 **as**

8 ~~(1)~~ a viatical settlement broker.
 9 ~~(2)~~ A person who solicits, offers, or attempts to negotiate a
 10 viatical settlement contract with a viator.

11 **(b) An insurance producer described in subsection (a) shall, not**
 12 **more than thirty (30) days after the first date the insurance**
 13 **producer acts as a viatical settlement broker:**

14 **(1) notify the commissioner, on a form prescribed by the**
 15 **commissioner:**

- 16 **(A) that the insurance producer is acting; and**
- 17 **(B) acknowledging that the insurance producer will act;**
 18 **as a viatical settlement broker in accordance with this**
 19 **chapter; and**

20 **(2) pay any notification fee determined by the commissioner.**

21 SECTION 23. IC 27-8-19.8-8.6 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8.6. The following are
 23 exempt from the licensing requirement under ~~IC 27-8-19.8-8.5~~: **may**
 24 **operate as a viatical settlement broker without meeting the**
 25 **requirements of section 8.5 of this chapter:**

26 (1) An accountant, an attorney, or a financial planner retained to
 27 represent the viator, and whose compensation is paid directly by
 28 or at the direction of the viator.

29 ~~(2)~~ A regularly salaried officer or employee of a viatical
 30 settlement broker or viatical settlement provider, if the officer or
 31 employee's duties and responsibilities do not include the
 32 solicitation or negotiation of viatical settlement contracts.

33 ~~(3)~~ **(2)** The following persons, to the extent that the person is
 34 engaged in the administration or operation of a program of
 35 employee benefits for the person's employees or the employees of
 36 the person's subsidiaries or affiliates involving the use of viatical
 37 settlement contracts issued by a ~~licensed~~ viatical settlement
 38 provider, if the person is not in any manner directly or indirectly
 39 compensated by the viatical settlement provider:

- 40 (A) An employer.
- 41 (B) An officer or employee of an employer.
- 42 (C) A trustee of an employee trust plan.

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1 SECTION 24. IC 27-8-19.8-8.7 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8.7. (a) A viatical
3 settlement broker:

- 4 (1) represents only the viator; and
- 5 (2) owes a fiduciary duty to the viator to act according to the
- 6 viator's instructions and in the best interest of the viator;
- 7 regardless of the manner in which the viatical settlement broker is
- 8 compensated.

9 (b) **An insurer that issues a policy that is the subject of a**
10 **possible viatical settlement contract is not responsible for an act or**
11 **omission:**

- 12 (1) **of a viatical settlement broker or viatical settlement**
- 13 **provider; and**
- 14 (2) **that arises out of or in connection with the viatical**
- 15 **settlement;**

16 **unless the insurer receives compensation from the viatical**
17 **settlement broker for placement of the viatical settlement contract,**
18 **or from the viatical settlement provider for the viatical settlement**
19 **contract.**

20 SECTION 25. IC 27-8-19.8-11 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 11. The department
22 shall investigate an applicant and issue a license to the applicant if the
23 department finds all of the following:

- 24 (1) The applicant is competent and trustworthy and intends to act
- 25 in good faith as a viatical settlement provider.
- 26 (2) The applicant has a good business reputation.
- 27 (3) The applicant has had the experience, training, or education
- 28 to qualify the applicant as a viatical settlement provider.
- 29 (4) If the applicant is a corporation, or limited liability
- 30 corporation, it is either:

- 31 (A) incorporated under Indiana law; or
- 32 (B) authorized to do business in Indiana.

33 (5) **The applicant has provided to the commissioner:**
34 (A) **a detailed plan of operation; and**
35 (B) **an antifraud plan that meets the requirements of this**
36 **chapter.**

37 SECTION 26. IC 27-8-19.8-16 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 16. (a) The department
39 may at any time require a viatical settlement provider or an applicant
40 ~~for a license~~ to disclose fully the identity of all of the viatical settlement
41 provider's or applicant's officers, employees, partners, and
42 stockholders.

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1 **(b) A viatical settlement provider shall, less than thirty (30) days**
2 **after a change, provide to the commissioner new or revised**
3 **information concerning officers, stockholders that hold ten percent**
4 **(10%) or more of the viatical settlement provider's stock, partners,**
5 **directors, members, or designated employees.**

6 SECTION 27. IC 27-8-19.8-17 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 17. (a) A viatical
8 settlement provider shall file with the department an annual report
9 containing information prescribed in rules adopted by the department
10 under IC 4-22-2.

11 (b) The rules adopted by the department under subsection (a) ~~shall~~
12 **must:**

- 13 **(1) set the date by which annual reports must be submitted; and**
- 14 **(2) limit the information included in an annual report to:**
 - 15 **(A) viatical settlements in which the viator is an Indiana**
 - 16 **resident; and**
 - 17 **(B) information that does not include:**
 - 18 **(i) individual transaction data regarding the business of**
 - 19 **viatical settlements; or**
 - 20 **(ii) data that compromises the privacy of personal,**
 - 21 **financial, and health information of the viator or**
 - 22 **insured.**

23 (c) A viatical settlement provider shall maintain records of each
24 viatical settlement at least five (5) years after the death of the insured.

25 SECTION 28. IC 27-8-19.8-17.2 IS ADDED TO THE INDIANA
26 CODE AS A NEW SECTION TO READ AS FOLLOWS
27 [EFFECTIVE JULY 1, 2006]: Sec. 17.2. (a) A licensee or a person
28 described in section 8.6 of this chapter shall, for at least five (5)
29 years, retain copies of all:

- 30 **(1) executed viatical settlement contracts, underwriting**
- 31 **documents, policy forms, and viatical settlement contract**
- 32 **applications from the date of the execution of the viatical**
- 33 **settlement contract;**
- 34 **(2) checks, drafts, or other evidence and documentation**
- 35 **related to the payment, transfer, deposit, or release of funds**
- 36 **from the date of a viatical settlement; and**
- 37 **(3) other records and documents related to activities**
- 38 **conducted under this chapter.**

39 **(b) If a licensee or person described in section 8.6 of this chapter**
40 **retains documents specified in subsection (a) for more than five (5)**
41 **years, the licensee or person shall produce the documents upon**
42 **request from the commissioner.**

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- (c) Records described in subsection (a):**
 - (1) must be legible and complete; and**
 - (2) may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by a process that accurately reproduces or forms a durable medium for the reproduction of a record.**

SECTION 29. IC 27-8-19.8-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 18. (a) ~~When the~~ department reasonably considers it necessary for the protection of the public, the department may examine the business and other affairs of a viatical settlement provider or an applicant.

(b) The department may order a viatical settlement provider or an applicant to produce records, books, files, or other information reasonably necessary to ascertain whether the viatical settlement provider or the applicant has violated or is violating the law or otherwise has acted or is acting contrary to the public interest.

(c) The viatical settlement provider or applicant shall pay the expenses of an examination conducted under this section:

(a) The commissioner may conduct an examination of a licensee as the commissioner, in the commissioner's sole discretion, determines appropriate.

(b) The commissioner may, for purposes of completing an examination of a licensee under this section, examine or investigate any person, or the business of any person, to the extent that the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the licensee.

(c) Instead of an examination under this section of a nonresident licensee that is licensed in Indiana, the commissioner may, in the commissioner's discretion, accept an examination report concerning the licensee from the commissioner of insurance of the licensee's state of residence.

(d) Upon determining that an examination should be conducted under this section, the commissioner shall issue an examination warrant that appoints one (1) or more examiners to perform the examination and instructs the examiner as to the scope of the examination. In conducting the examination, the examiner shall observe:

- (1) the guidelines and procedures set forth in the Examiners' Handbook adopted by the NAIC; and**
- (2) any guidelines and procedures prescribed by the commissioner, as determined appropriate by the**

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commissioner.

(e) A person from whom information is sought in connection with an examination under this section, and the person's officers, directors, and agents, shall provide to an examiner appointed under subsection (d) timely, convenient, and free access:

- (1) at all reasonable hours at the person's offices; and
- (2) to all books, records, accounts, papers, documents, assets, and computer or other recordings related to the property, assets, business, and affairs of the licensee being examined.

The officers, directors, employees, and agents of the person shall facilitate the examination and aid in the examination to the extent possible.

(f) The refusal of a licensee, by the licensee's officers, directors, employees, or agents, to submit to examination or to comply with a reasonable written request from the commissioner is grounds for denial, suspension, or nonrenewal, after a proceeding under IC 4-21.5, of the licensee's license or authority to engage in the business of viatical settlements or other business that is subject to the commissioner's jurisdiction.

(g) The commissioner may issue subpoenas, administer oaths, and examine under oath any person as to any matter relevant to an examination. If the person fails or refuses to obey a subpoena, the commissioner may petition a court with jurisdiction and, upon proper showing, the court may enter an order compelling the person to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

(h) When making an examination under this section, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, and other professionals and specialists as examiners. The reasonable cost of the services provided by persons appointed under this subsection must be borne by the licensee that is the subject of the examination.

(i) This section does not limit the commissioner's authority to do the following:

- (1) Terminate or suspend an examination and pursue other legal action under this title. Findings of fact and conclusions made under an examination are prima facie evidence in a legal action referred to in this subsection.
- (2) Use and, if appropriate, make public:
 - (A) a final or preliminary examination report;
 - (B) examiner or licensee work papers or other documents;

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1 (C) other information discovered or developed during the
2 course of an examination;
3 in the furtherance of a legal action that the commissioner, in
4 the commissioner's sole discretion, considers appropriate.
5 (j) Examination reports must be comprised solely of:
6 (1) facts that:
7 (A) appear on the books, records, or other documents of
8 the licensee, the licensee's agents, or other persons
9 examined; or
10 (B) are ascertained from the testimony of the licensee's
11 officers or agents or other persons examined concerning
12 the licensee's affairs; and
13 (2) conclusions and recommendations the examiners find
14 reasonably warranted from the facts described in subdivision
15 (1).
16 (k) Not later than sixty (60) days after completion of an
17 examination, the examiner in charge shall file with the
18 commissioner a verified written report of examination under oath.
19 (l) Upon receipt of a report described in subsection (k), the
20 commissioner shall transmit to the licensee:
21 (1) the report; and
22 (2) notice that the licensee may, not more than thirty (30) days
23 after receiving the notice, make a written submission or
24 rebuttal with respect to matters contained in the report.
25 (m) If the commissioner determines, as a result of an
26 examination, that regulatory action is appropriate, the
27 commissioner may initiate proceedings as provided by law.
28 SECTION 30. IC 27-8-19.8-18.1 IS ADDED TO THE INDIANA
29 CODE AS A NEW SECTION TO READ AS FOLLOWS
30 [EFFECTIVE JULY 1, 2006]: **Sec. 18.1. (a) Names and individual**
31 **identification data for viators is confidential for purposes of**
32 **IC 5-14-3-4(a)(1) and may not be disclosed by the commissioner,**
33 **unless required by law.**
34 (b) Except as otherwise provided in this chapter or in the law of
35 another state or jurisdiction that is substantially similar to this
36 chapter, an examination report, a working paper, recorded
37 information, another document, or a copy of an examination
38 report, working paper, recorded information, or another document
39 that is produced by, obtained by, or disclosed to the commissioner
40 or another person in the course of an examination made under this
41 chapter or the law of another state or jurisdiction that is
42 substantially similar to this chapter, or in the course of analysis or

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1 investigation by the commissioner of the financial condition or
2 market conduct of a licensee, is confidential for purposes of
3 IC 5-14-3-4(a)(1) and privileged, not subject to subpoena, and not
4 subject to discovery or admissible in evidence in a private civil
5 action.

6 (c) The commissioner may use information specified in
7 subsection (a) in the furtherance of a legal action brought as part
8 of the commissioner's official duties.

9 (d) Documents, materials, and other information, including
10 working papers and copies of documents, materials, and other
11 information, in the possession or control of the NAIC and affiliates
12 and subsidiaries of the NAIC are confidential and privileged, not
13 subject to subpoena, and not subject to discovery or admissible in
14 evidence in a private civil action if the documents, materials, or
15 other information are:

16 (1) created, produced, or obtained by or disclosed to the NAIC
17 and affiliates and subsidiaries of the NAIC in the course of
18 assisting an examination made under this chapter or assisting
19 a commissioner in the analysis or investigation of the financial
20 condition or market conduct of a licensee; or

21 (2) disclosed to the NAIC and affiliates and subsidiaries of the
22 NAIC under subsection (f) by a commissioner;

23 (e) Neither the commissioner nor a person that receives
24 documents, materials, or other information while acting under the
25 authority of the commissioner, including the NAIC and affiliates
26 and subsidiaries of the NAIC, may testify in a private civil action
27 concerning confidential documents, materials, or information
28 described in subsection (a).

29 (f) To assist in the performance of the commissioner's duties, the
30 commissioner:

31 (1) may share documents, materials, and other information,
32 including confidential and privileged documents, materials,
33 and information described in subsection (a), with other state,
34 federal, and international regulatory agencies, the NAIC and
35 affiliates and subsidiaries of the NAIC, and state, federal, and
36 international law enforcement authorities, if the recipient
37 agrees to maintain the confidentiality and privileged status of
38 the documents, materials, and other information;

39 (2) may receive documents, materials, and other information,
40 including otherwise confidential and privileged documents,
41 materials, or information, from the NAIC, affiliates and
42 subsidiaries of the NAIC, and regulatory and law enforcement

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1 officials of other jurisdictions in the United States; and
2 (3) shall maintain as confidential or privileged a document,
3 material, or information received with notice or the
4 understanding that the document, material, or information is
5 confidential or privileged under the laws of the jurisdiction
6 that is the source of the document, material, or information.

7 (g) The:
8 (1) disclosure to the commissioner under this section of
9 documents, materials, or information described in subsection
10 (f); or
11 (2) sharing of the documents, materials, or information as
12 authorized by subsection (f):

13 does not result in a waiver of an applicable privilege or claim of
14 confidentiality in the documents, materials, or information.

15 (h) A privilege established under a law of another state or
16 jurisdiction that is substantially similar to the privilege established
17 under this section is available and enforceable in a proceeding in,
18 and in a court of, Indiana.

19 (i) This section does not prevent or prohibit the commissioner
20 from disclosing the content of an examination report, preliminary
21 examination report or results, or a matter relating to an
22 examination report or preliminary examination report or results,
23 to the commissioner of another state or country, law enforcement
24 officials of Indiana or another state or agency of the federal
25 government, or the NAIC, if the entity receiving the report or
26 matters relating to the report agrees in writing to hold the report
27 or matters confidential and in a manner consistent with this
28 section.

29 SECTION 31. IC 27-8-19.8-18.2 IS ADDED TO THE INDIANA
30 CODE AS A NEW SECTION TO READ AS FOLLOWS
31 [EFFECTIVE JULY 1, 2006]: **Sec. 18.2. (a) An examiner may not be**
32 **appointed under section 18(d) of this chapter if the examiner,**
33 **directly or indirectly:**

- 34 (1) has a conflict of interest with;
- 35 (2) is affiliated with the management of; or
- 36 (3) owns a pecuniary interest in;
- 37 a person subject to examination under this chapter.

38 (b) Subsection (a) does not automatically preclude an examiner
39 from being:

- 40 (1) a viator;
- 41 (2) an insured; or
- 42 (3) a beneficiary;

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1 of a policy that is proposed to be the subject of a viatical settlement
2 contract.

3 (c) The commissioner may retain, on an individual basis,
4 qualified actuaries, certified public accountants, and other similar
5 independently practicing individuals, regardless of whether they
6 may be similarly employed or retained by a person that is subject
7 to examination under this chapter.

8 SECTION 32. IC 27-8-19.8-18.3 IS ADDED TO THE INDIANA
9 CODE AS A NEW SECTION TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2006]: **Sec. 18.3. (a) A cause of action does**
11 **not arise, and liability shall not be imposed, against the**
12 **commissioner, the commissioner's authorized representative, or an**
13 **examiner appointed by the commissioner for a statement made or**
14 **conduct performed in good faith while implementing this chapter.**

15 (b) A cause of action does not arise, and liability shall not be
16 imposed, against a person for communicating or delivering
17 information or data to the commissioner, the commissioner's
18 authorized representative, or an examiner appointed by the
19 commissioner related to an examination made under this chapter
20 if the communication or delivery is performed in good faith and
21 without fraudulent intent or the intent to deceive.

22 (c) Subsection (b) does not abrogate or modify a common law or
23 statutory privilege or immunity of a person specified in subsection
24 (a).

25 (d) A person specified in subsection (a) or (b) is entitled to an
26 award of attorney's fees and costs if the person is the prevailing
27 party in a civil cause of action for libel, slander, or another
28 relevant tort arising out of activities undertaken to implement this
29 chapter.

30 SECTION 33. IC 27-8-19.8-18.4 IS ADDED TO THE INDIANA
31 CODE AS A NEW SECTION TO READ AS FOLLOWS
32 [EFFECTIVE JULY 1, 2006]: **Sec. 18.4. The commissioner may**
33 **investigate a:**

- 34 (1) suspected fraudulent viatical settlement act; and
- 35 (2) person engaged in the business of viatical settlements.

36 SECTION 34. IC 27-8-19.8-19 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 19. (a) After a hearing**
38 **under IC 4-21.5, the department may suspend, revoke, or refuse to**
39 **renew a viatical settlement provider's license, or impose a civil penalty,**
40 **or both, if the department finds any of the following:**

- 41 (1) There was a **material** misrepresentation in the application for
42 the license.

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- 1 (2) The viatical settlement provider is or:
 2 (A) an officer of;
 3 (B) a partner in;
 4 (C) a member of; or
 5 (D) a key member of management of;
 6 **the viatical settlement provider has been shown to be**
 7 **untrustworthy or incompetent to act as a viatical settlement**
 8 **provider.**
 9 (3) The viatical settlement provider demonstrates a pattern of
 10 unreasonable payments to viators.
 11 (4) The viatical settlement provider has been convicted of, or
 12 pleaded guilty or nolo contendere to, an offense the definition of
 13 which includes fraudulent acts as an element of the offense
 14 regardless of whether a judgement has been entered by the court.
 15 (5) The viatical settlement provider no longer meets the
 16 requirements for initial licensure.
 17 (6) The viatical settlement provider has failed to honor the
 18 contractual obligations of a viatical settlement contract.
 19 (7) The viatical settlement provider, **including an officer of, a**
 20 **partner in, a member of, or a key member of management of**
 21 **the viatical settlement provider, has violated this chapter.**
 22 (8) **The viatical settlement provider has assigned, transferred,**
 23 **or pledged a viaticated policy to a person other than:**
 24 (A) a viatical settlement provider licensed under this
 25 chapter;
 26 (B) an accredited investor or qualified institutional buyer
 27 (as defined in Regulation D, Rule 501, or Rule 144A of the
 28 federal Securities Act of 1933 (15 U.S.C. 77a -77aa));
 29 (C) a financing entity;
 30 (D) a special purpose entity; or
 31 (E) a related provider trust.
 32 (9) **The viatical settlement provider has facilitated the change**
 33 **of state of residency of a policy or a viator to avoid**
 34 **compliance with this chapter.**
 35 (b) **The commissioner may, after a proceeding held under**
 36 **IC 4-21.5, suspend, revoke, or refuse to renew an insurance**
 37 **producer's license under IC 27-1-15.6 if the commissioner finds**
 38 **that the insurance producer has:**
 39 (1) **violated this chapter;**
 40 (2) **received a fee, a commission, or other valuable**
 41 **consideration for the insurance producer's services with**
 42 **respect to a viatical settlement contract that involved:**

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- 1 (A) an unlicensed viatical settlement provider;
- 2 (B) a person who offered or attempted to negotiate a
- 3 viatical settlement contract and:
- 4 (i) was not a viatical settlement broker; or
- 5 (ii) dealt in bad faith with a viator;
- 6 (3) facilitated a change of state of residency of a policy or a
- 7 viator to avoid compliance with this chapter; or
- 8 (4) dealt in bad faith with a viator.

9 SECTION 35. IC 27-8-19.8-20.1 IS ADDED TO THE INDIANA
 10 CODE AS A NEW SECTION TO READ AS FOLLOWS
 11 [EFFECTIVE JULY 1, 2006]: **Sec. 20.1. An insurer that issues a**
 12 **policy shall, on a form prescribed by the commissioner, respond to**
 13 **a request from a viatical settlement provider or viatical settlement**
 14 **broker for verification of coverage:**

- 15 (1) not more than thirty (30) calendar days after the date the
- 16 request is received by the insurer;
- 17 (2) by:
- 18 (A) completing and issuing; or
- 19 (B) indicating in what respects the insurer is unable to
- 20 issue;
- 21 the verification of coverage; and
- 22 (3) indicating whether, based on medical evidence and
- 23 documents available to the insurer, the insurer will investigate
- 24 the validity of the policy.

25 SECTION 36. IC 27-8-19.8-21, AS AMENDED BY P.L.223-2005,
 26 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2006]: **Sec. 21. (a) A viatical settlement contract must**
 28 **establish the terms under which the viatical settlement provider will**
 29 **pay value, in return for the viator's assignment, bequest, devise, sale,**
 30 **or transfer of the death benefit, certificate, or ownership of the**
 31 **insurance policy to the viatical settlement provider.**

32 (b) Subject to subsection (c), a viatical settlement contract must
 33 provide for the unconditional rescission of the contract by the viator ~~for~~
 34 **during the longer shorter** of the following:

- 35 (1) The period ending not more than fifteen (15) days after the
- 36 receipt of the viatical settlement proceeds by the viator. ~~or~~
- 37 (2) The period ending not more than thirty (30) days after
- 38 execution of the contract.

39 (c) **The rescission of a viatical settlement contract under**
 40 **subsection (b) is effective only if:**

- 41 (1) notice of the rescission is provided; and
- 42 (2) repayment of proceeds and premiums, loans, and loan

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1 interest is made;
2 to the viatical settlement provider during the period described in
3 subsection (b).

4 (c) (d) A viatical settlement contract is rescinded if the insured dies
5 during the rescission period, subject to repayment to the viatical
6 settlement provider, **not more than forty-five (45) days after the date**
7 **the insured dies**, of all proceeds and any premiums, loans, and loan
8 interest that have been paid by the viatical settlement provider.

9 SECTION 37. IC 27-8-19.8-21.5 IS ADDED TO THE INDIANA
10 CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 21.5. If the insured under a policy**
11 **does not have a terminal illness or a chronic illness, the payment**
12 **under a viatical settlement contract involving the policy must be in**
13 **an amount greater than the cash surrender value or accelerated**
14 **death benefit available under the policy at the time the viatical**
15 **settlement contract is entered into.**

16 SECTION 38. IC 27-8-19.8-23, AS AMENDED BY P.L.223-2005,
17 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2006]: Sec. 23. (a) A viatical settlement provider or viatical
19 settlement broker shall, not later than the date of application, provide
20 to a viator a brochure approved by the commissioner and describing the
21 viatical settlement process. If a brochure describes only a viatical
22 settlement contract in which the insured does not have a ~~catastrophic~~
23 ~~or life threatening terminal illness or chronic illness, or condition;~~ the
24 brochure may use the term "life settlement" in place of the term
25 "viatical settlement".

26 (b) A viatical settlement provider or viatical settlement broker shall,
27 in a separate document that is signed by the viator and the viatical
28 settlement provider or viatical settlement broker, disclose the following
29 information to the viator not later than the date of application:
30

- 31 (1) Possible alternatives to viatical settlement contracts, including
32 accelerated benefits or policy loans offered by the issuer of the
33 ~~life insurance~~ policy.
34 (2) Federal and state tax consequences that may result from
35 entering into a viatical settlement contract, and that the viator
36 should seek assistance from a professional tax advisor.
37 (3) Possible:
38 (A) adverse effect on eligibility for; or
39 (B) interruption of assistance provided by;
40 medical or public assistance programs as a consequence of
41 entering into a viatical settlement contract, and that the viator
42 should seek advice from the appropriate government agencies.

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- 1 (4) The viator's right to rescind a viatical settlement contract as
 2 provided in section 21 of this chapter.
- 3 (5) ~~The amount of any fees paid by a viatical settlement provider~~
 4 ~~to a~~ **In the case of a viatical settlement broker, that the** viatical
 5 settlement broker:
- 6 (A) **represents only the viator;**
 7 (B) **does not represent the insurer or the viatical settlement**
 8 **provider; and**
 9 (C) **owes a duty to the viator to act according to the**
 10 **viator's instructions.**
- 11 (6) A statement that proceeds of the viatical settlement could be
 12 subject to claims of creditors.
- 13 (7) A statement that:
- 14 (A) entering into a viatical settlement contract may cause other
 15 rights or benefits under the policy, including conversion rights,
 16 waiver of premium benefits, family riders, or coverage of a life
 17 other than the insured, to be forfeited by the viator; and
 18 (B) the viator should seek advice from a financial advisor.
- 19 ~~(8) The procedure for contacts with the insured.~~
- 20 ~~(9)~~ (8) That the proceeds of the viatical settlement will be
 21 transferred to the viator as provided in section 24.2 of this
 22 chapter.
- 23 ~~(10)~~ (9) A statement containing the following language:
 24 "All medical, financial, or personal information solicited or
 25 obtained by a viatical settlement provider or viatical settlement
 26 broker about an insured, including the insured's identity or the
 27 identity of family members, a spouse, or a significant other
 28 may be disclosed as necessary to effect the viatical settlement
 29 between the viator and the viatical settlement provider. If you
 30 are asked to provide this information, you will be asked to
 31 consent to the disclosure. The information may be provided to
 32 someone who buys the policy or provides funds for the
 33 purchase. You may be asked to renew your permission to share
 34 information every two years."
- 35 ~~(11)~~ (10) That the insured may be contacted by the viatical
 36 settlement provider or viatical settlement broker to determine the
 37 health status of the insured in accordance with section 24.9 of this
 38 chapter.
- 39 (c) The viatical settlement provider shall disclose the following
 40 information to the viator, conspicuously displayed in the viatical
 41 settlement contract or in a separate document signed by the viatical
 42 settlement provider and the viator, before a viatical settlement contract

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is signed:

(1) Any affiliation between the viatical settlement provider and the insurer that issued the ~~life insurance~~ policy or ~~certificate~~ that is the subject of the viatical settlement contract.

(2) The name, address, and telephone number of the viatical settlement provider.

(3) If the ~~life insurance~~ policy or ~~certificate~~ that is the subject of the viatical settlement contract was issued as a joint policy or includes family riders or any coverage of an individual other than the insured:

(A) the possible loss of coverage of the other individuals under the policy; ~~or certificate~~; and

(B) that the viator should consult with the viator's insurance producer or the insurer that issued the policy ~~or certificate~~ for advice concerning the proposed viatical settlement contract.

(4) The:

(A) dollar amount of the current death benefit payable to the viatical settlement provider; and

(B) if known, the:

(i) availability of any additional guaranteed insurance benefits;

(ii) dollar amount of any accidental death and dismemberment benefits; and

(iii) viatical settlement provider's interest in the benefits described in items (i) and (ii);

~~under the policy. or certificate.~~

(5) The:

(A) name, business address, and telephone number of the trustee or escrow agent described in section 24.2 of this chapter; and

(B) right of the viator or insured to inspect or receive copies of the relevant escrow or trust agreements or documents.

~~(d) A viatical settlement broker shall disclose to the viator, conspicuously displayed in the viatical settlement contract or in a separate document signed by the viatical settlement broker and the viator before a viatical settlement contract is signed, the amount and method of calculation of the viatical settlement broker's compensation.~~

~~(e)~~ (d) If a viatical settlement provider transfers ownership or changes the beneficiary of a viaticated policy, the viatical settlement provider shall, not more than twenty (20) days after the transfer or change occurs, inform the insured of the transfer or change.

SECTION 39. IC 27-8-19.8-24, AS AMENDED BY P.L.223-2005,

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1 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2006]: Sec. 24. A viatical settlement provider shall obtain the
3 following: ~~before entering into a viatical settlement contract:~~

4 (1) **Before entering into or effectuating a viatical settlement**
5 **contract:**

6 (A) if the viator is the insured, a written statement from a
7 licensed attending physician that the insured is of sound mind
8 and under no constraint or undue influence; **and**

9 (B) **a statement signed by the viator and witnessed by two**
10 **(2) disinterested witnesses in which the viator discloses the**
11 **identity of any person that served as a viatical settlement**
12 **broker in connection with the viatical settlement contract.**

13 (2) **Before or at the time of execution of a viatical settlement**
14 **contract,** a document signed by the viator and witnessed by two

15 (2) disinterested witnesses in which the viator does the following:

16 (A) Consents to the viatical settlement contract.

17 (B) If the insured has a ~~catastrophic or life threatening~~
18 **terminal illness or chronic illness, or condition,**
19 **acknowledges that:**

20 (i) ~~the catastrophic or life threatening insured has a~~
21 **terminal illness or chronic illness; or condition; and**

22 (ii) **the terminal illness or chronic illness was diagnosed**
23 **after the policy was issued.**

24 (C) Represents that the viator has a full and complete
25 understanding of the viatical settlement contract.

26 (D) Represents that the viator has a full and complete
27 understanding of the benefits of the ~~life insurance~~ policy.

28 (E) Acknowledges that the viator ~~has entered~~ **is entering** into
29 the viatical settlement contract freely and voluntarily.

30 (F) ~~Discloses the identity of any person that served as a~~
31 ~~viatical settlement broker in connection with the viatical~~
32 ~~settlement contract.~~

33 (3) A document in which the insured consents to the release of the
34 insured's medical records.

35 SECTION 40. IC 27-8-19.8-24.7 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 24.7. Except as
37 otherwise ~~provided~~ **required** by law, a person with actual knowledge
38 of a viator's ~~or insured's~~ identity ~~may~~ **shall** not disclose that identity
39 to another person unless the disclosure is:

40 (1) necessary to effect a viatical settlement contract **between a**
41 **viator and the viatical settlement provider** and the viator ~~has~~
42 ~~provided or insured, or both if required, provide~~ **prior** written

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- 1 consent to the disclosure;
- 2 (2) provided in response to an investigation **or examination** by
- 3 the commissioner or other governmental officer or agency; ~~or~~
- 4 (3) ~~in connection with a term of or condition to~~ a transfer of a
- 5 ~~viatical settlement contract or viaticated policy to another licensed~~
- 6 **by one (1)** viatical settlement provider ~~or to an entity that~~
- 7 ~~provides financing to effect the viatical settlement contract under~~
- 8 ~~a written agreement with a licensed another~~ viatical settlement
- 9 provider;
- 10 **(4) necessary to permit a financing entity, related provider**
- 11 **trust, or special purpose entity to finance the purchase of a**
- 12 **policy by a viatical settlement provider and the viator and**
- 13 **insured have provided prior written consent to the disclosure;**
- 14 **(5) necessary to allow the viatical settlement provider or the**
- 15 **viatical settlement provider's authorized representative to**
- 16 **make contacts to determine health status; or**
- 17 **(6) required to purchase stop loss coverage.**

18 SECTION 41. IC 27-8-19.8-25 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 25. The department
 20 may adopt rules under IC 4-22-2 to **do the following:**

- 21 (1) Establish standards for evaluating the reasonableness of
- 22 payments under viatical settlement contracts **involving an**
- 23 **insured who has a terminal illness or a chronic illness,**
- 24 including regulation of discount rates used to determine the
- 25 amount paid in exchange for an assignment, a bequest, a devise,
- 26 a sale, or a transfer of a benefit under a ~~life insurance~~ policy.
- 27 **(2) Establish:**
- 28 (A) **licensing requirements, fees, and standards for**
- 29 **continued licensure for a viatical settlement provider; and**
- 30 (B) **a fee for an insurance producer that meets the**
- 31 **requirements of section 8.5 of this chapter and acts as a**
- 32 **viatical settlement broker.**
- 33 **(3) Require a bond or another mechanism for financial**
- 34 **accountability for a viatical settlement provider.**
- 35 **(4) Govern the relationship and responsibilities of an insurer,**
- 36 **a viatical settlement provider, a viatical settlement broker, an**
- 37 **insurance producer that meets the requirements of section 8.5**
- 38 **of this chapter and acts as a viatical settlement broker, and**
- 39 **another person in the business of viatical settlements during**
- 40 **the period of consideration or effectuation of a viatical**
- 41 **settlement contract.**

42 SECTION 42. IC 27-8-19.8-25.2 IS ADDED TO THE INDIANA

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1 CODE AS A NEW SECTION TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2006]: **Sec. 25.2. (a) This section applies to**
 3 **advertising of viatical settlement contracts or related products or**
 4 **services intended for dissemination in Indiana, including Internet**
 5 **advertising viewed by individuals in Indiana.**

6 (b) An advertisement of a licensee's contracts, products, and
 7 services, regardless of by whom the advertisement is written,
 8 created, designed, or presented, is the responsibility of:

9 (1) the licensee; and

10 (2) the person that writes, creates, designs, or presents the
 11 advertisement.

12 (c) A licensee shall establish and maintain a system of control
 13 over the content, form, and method of dissemination of an
 14 advertisement described in subsection (b), including regular
 15 routine notification, at least one (1) time per year, to agents and
 16 other persons that are authorized to disseminate the advertisement,
 17 of the requirements and procedures for approval before the use of
 18 an advertisement that is not furnished by the licensee.

19 (d) An advertisement must:

20 (1) be truthful and not misleading in fact or by implication;

21 (2) be in a form and have content that is sufficiently complete
 22 and clear to avoid deception when the advertisement concerns
 23 a viatical settlement contract; and

24 (3) not have the capacity or tendency to mislead or deceive, as
 25 determined by the commissioner, from the overall impression
 26 that the advertisement may be reasonably expected to create
 27 upon an individual of average education or intelligence in the
 28 segment of the public to which the advertisement is directed.

29 (e) The following provisions apply to an advertisement:

30 (1) An advertisement may not omit material information or
 31 use words, phrases, statements, references, or illustrations if
 32 the omission or use has the capacity, tendency, or effect of
 33 misleading or deceiving the public as to the nature or extent
 34 of a benefit, loss covered, or state or federal tax consequence.
 35 The existence of any of the following does not remedy a
 36 misleading statement:

37 (A) The availability of a viatical settlement contract for
 38 inspection before consummation of the sale of the policy.

39 (B) An offer to refund the payment made to the viator if
 40 the viator is not satisfied.

41 (C) A viatical settlement contract that includes a free look
 42 period that satisfies or exceeds legal requirements.

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(2) An advertisement may not use the name or title of an insurer or a policy unless the advertisement has been approved by the insurer.

(3) An advertisement may not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

(4) The terms "free", "no cost", "without cost", "no additional cost", "at no extra cost", or similar terms may not be used with respect to a benefit or service, unless the term is true. An advertisement may:

- (A) specify the charge for a benefit or service;
- (B) state that a charge is included in the payment; or
- (C) use other appropriate language.

(5) A testimonial, an appraisal, an analysis, or an endorsement used in an advertisement must:

- (A) be genuine;
- (B) represent the current opinion of the author;
- (C) be applicable to the viatical settlement contract, product, or service advertised; and
- (D) be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonial, appraisal, analysis, or endorsement.

In using a testimonial, an appraisal, an analysis, or an endorsement, a licensee makes as the licensee's own all statements contained in the testimonial, appraisal, analysis, or endorsement and the statements are subject to this section.

(6) If an individual making a testimonial, an appraisal, an analysis, or an endorsement:

- (A) has a financial interest in a viatical settlement provider or related entity as a stockholder, a director, an officer, an employee, or otherwise; or
- (B) receives a direct or indirect benefit, other than required union scale wages;

the existence of the financial interest or benefit must be prominently disclosed in the advertisement in which the testimonial, appraisal, analysis, or endorsement is used.

(7) An advertisement may not state or imply that a viatical settlement contract, benefit, or service has been approved or endorsed by a group of individuals, a society, an association, or another organization unless:

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- 1 (A) the approval or endorsement has occurred; and
- 2 (B) any relationship between an organization and the
- 3 licensee is disclosed.
- 4 (8) If an entity that makes an endorsement or a testimonial:
- 5 (A) is owned, controlled, or managed by a licensee; or
- 6 (B) receives a payment or other consideration from a
- 7 licensee for making the endorsement or testimonial;
- 8 that fact must be disclosed in the advertisement.
- 9 (9) If an endorsement refers to benefits received under a
- 10 viatical settlement contract, all pertinent information
- 11 concerning the viatical settlement contract must be retained
- 12 for at least five (5) years after the endorsement is used.
- 13 (f) Information that must be disclosed under subsection (e) must
- 14 not be minimized, rendered obscure, presented in an ambiguous
- 15 manner, or intermingled with the text of the advertisement so as to
- 16 be confusing or misleading.
- 17 (g) An advertisement must not contain statistical information
- 18 unless:
- 19 (1) the statistical information accurately reflects recent and
- 20 relevant facts; and
- 21 (2) the source of the statistics used in the advertisement is
- 22 identified.
- 23 (h) An advertisement must not disparage an insurer, a viatical
- 24 settlement provider, a viatical settlement broker, an insurance
- 25 producer, a policy, a service, or a method of marketing.
- 26 (i) In an advertisement concerning a licensee or a licensee's
- 27 viatical settlement contract, products, or services:
- 28 (1) the name, address, and telephone number of the licensee
- 29 must be clearly identified;
- 30 (2) if a specific viatical settlement contract is advertised, the
- 31 viatical settlement contract must be identified by form
- 32 number or another appropriate description; and
- 33 (3) if an application is part of the advertisement, the name of
- 34 the viatical settlement provider must appear on the
- 35 application.
- 36 (j) An advertisement must not include a trade name, group
- 37 designation, name of the parent company of a licensee, name of a
- 38 particular division of the licensee, service mark, slogan, symbol, or
- 39 another device or reference without disclosing the name of the
- 40 licensee if the inclusion would:
- 41 (1) have the capacity or tendency to mislead or deceive as to
- 42 the true identity of the licensee; or

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- 1 (2) create the impression that a person other than the licensee
- 2 has any responsibility for the financial obligation under a
- 3 viatical settlement contract.
- 4 (k) An advertisement must not include a combination of words,
- 5 symbols, or physical materials that by the content, phraseology,
- 6 shape, color, or other characteristics of the combination:
- 7 (1) is so similar to a combination of words, symbols, or
- 8 physical materials used by a government program or agency;
- 9 or
- 10 (2) otherwise appears to be of such a nature;
- 11 that the combination tends to mislead a prospective viator into
- 12 believing that the solicitation is in some manner connected with a
- 13 government program or agency.
- 14 (l) An advertisement may:
- 15 (1) reflect that a licensee is licensed in the state where the
- 16 advertisement appears if the advertisement does not:
- 17 (A) exaggerate the licensee's licensure in the state; or
- 18 (B) suggest or imply that a competing licensee may not also
- 19 be licensed in the state; and
- 20 (2) ask the audience to consult the licensee's Internet web site
- 21 or contact the department of insurance to determine:
- 22 (A) whether the state requires licensure; and
- 23 (B) if the state requires licensure, whether the licensee or
- 24 another viatical settlement provider is licensed.
- 25 (m) An advertisement must not create the impression that:
- 26 (1) a viatical settlement provider;
- 27 (2) a viatical settlement provider's financial condition or
- 28 status;
- 29 (3) the payment of a viatical settlement provider's claims; or
- 30 (4) the merits, desirability, or advisability of a viatical
- 31 settlement provider's viatical settlement contracts;
- 32 are recommended or endorsed by a government entity.
- 33 (n) An advertisement:
- 34 (1) must state the name of the actual licensee; and
- 35 (2) must not use a trade name, a group designation, the name
- 36 of an affiliate or a controlling entity of the licensee, a service
- 37 mark, a slogan, a symbol, or another device in a manner that
- 38 would have the capacity or tendency to mislead or deceive as
- 39 to the true identity of the actual licensee or create the false
- 40 impression that an affiliate or a controlling entity would have
- 41 any responsibility for the financial obligation of the licensee.
- 42 (o) An advertisement must not directly or indirectly create the

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1 impression that a division or agency of Indiana or of the federal
2 government endorses, approves, or favors:

- 3 (1) a licensee or a licensee's business practices or methods of
- 4 operation;
- 5 (2) the merits, desirability, or advisability of a viatical
- 6 settlement contract;
- 7 (3) a viatical settlement contract; or
- 8 (4) a policy or insurer.

9 (p) If an advertiser emphasizes the speed with which a viatical
10 settlement contract will occur, the advertisement must disclose,
11 based upon facts concerning the business of the licensee that is the
12 subject of the advertisement, the average time frame:

- 13 (1) from the completed application to the date of offer of a
- 14 viatical settlement contract; and
- 15 (2) from acceptance of the offer of the viatical settlement
- 16 contract to receipt of the funds by the viator.

17 (q) If an advertisement emphasizes a dollar amount available to
18 a viator, the advertisement must disclose the average purchase
19 price as a percent of face value obtained by viators that entered
20 into a viatical settlement contract with the licensee during the
21 previous six (6) months.

22 SECTION 43. IC 27-8-19.8-25.3 IS ADDED TO THE INDIANA
23 CODE AS A NEW SECTION TO READ AS FOLLOWS
24 [EFFECTIVE JULY 1, 2006]: Sec. 25.3. (a) A person shall not
25 commit a fraudulent viatical settlement act.

- 26 (b) A person may not knowingly or intentionally interfere with:
- 27 (1) the enforcement of this chapter; or
- 28 (2) an investigation of a suspected or an actual violation of
- 29 this chapter.

30 (c) A person in the business of viatical settlements may not
31 knowingly or intentionally permit a person convicted of a felony
32 involving dishonesty or breach of trust to participate in the
33 business of viatical settlements.

34 (d) A viatical settlement contract and an application for a
35 viatical settlement contract, regardless of the form of transmission,
36 must contain the following statement or a substantially similar
37 statement:

38 "A person who knowingly presents false information in an
39 application for insurance or a viatical settlement contract is guilty
40 of a crime and may be subject to fines and confinement in prison."

41 (e) The lack of the statement required under subsection (d) does
42 not constitute a defense to a prosecution under IC 35-43-5-4.5

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1 against a person who commits a fraudulent viatical settlement act.
 2 (f) A person that is engaged in the business of viatical
 3 settlements and has knowledge or a reasonable belief that a
 4 fraudulent viatical settlement act is being, will be, or has been
 5 committed shall provide to the commissioner the information
 6 required, and in a manner prescribed, by the commissioner.
 7 (g) A person that has knowledge or a reasonable belief that a
 8 fraudulent viatical settlement act is being, will be, or has been
 9 committed may provide to the commissioner the information
 10 required, and in a manner prescribed, by the commissioner.
 11 (h) Civil liability may not be imposed on, and a cause of action
 12 may not arise from, a person's furnishing information concerning
 13 a suspected, an anticipated, or a completed fraudulent viatical
 14 settlement act or a suspected or completed fraudulent insurance
 15 act, if the information is provided to or received from:
 16 (1) the commissioner or the commissioner's employee, agent,
 17 or representative;
 18 (2) a federal, state, or local law enforcement or regulatory
 19 official or an employee, an agent, or a representative of a
 20 federal, state, or local law enforcement or regulatory official;
 21 (3) a person that is involved in the prevention and detection of
 22 a fraudulent viatical settlement act or the person's agent,
 23 employee, or representative;
 24 (4) the NAIC, the National Association of Securities Dealers,
 25 the North American Securities Administrators Association, an
 26 employee, agent, or representative of the NAIC, the National
 27 Association of Securities Dealers, or the North American
 28 Securities Administrators Association, or another regulatory
 29 body that oversees life insurance or viatical settlement
 30 contracts; or
 31 (5) the insurer that issued the policy covering the life of the
 32 insured.
 33 (i) Subsection (h) does not apply to statements made with actual
 34 malice. In an action brought against a person for filing a report or
 35 furnishing other information concerning a fraudulent viatical
 36 settlement act or a fraudulent insurance act, the party bringing the
 37 action must specifically plead an allegation to which subsection (h)
 38 does not apply because the person filing the report or furnishing
 39 the information did so with actual malice.
 40 (j) A person identified in subsection (h) is entitled to an award
 41 of attorney's fees and costs if the:
 42 (1) person is the prevailing party in a civil cause of action for

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1 libel, slander, or another relevant tort arising out of activities
2 in which the person engaged to comply with this chapter; and
3 (2) party bringing the action did not have a reasonable basis
4 in law or fact to initiate the action.

5 (k) This section does not abrogate or modify common law or
6 statutory privileges or immunities of a person described in
7 subsection (h).

8 (l) Subsection (h) does not apply to a person's furnishing
9 information concerning the person's own suspected, anticipated, or
10 completed fraudulent viatical settlement act or suspected,
11 anticipated, or completed fraudulent insurance act.

12 SECTION 44. IC 27-8-19.8-25.5 IS ADDED TO THE INDIANA
13 CODE AS A NEW SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2006]: **Sec. 25.5. (a) It is a violation of this**
15 **chapter for a person to enter into a viatical settlement contract less**
16 **than two (2) years after the date of issuance of the policy unless the**
17 **viator certifies to the viatical settlement provider that one (1) or**
18 **more of the following conditions have been met during the two (2)**
19 **year period:**

20 (1) The policy was issued upon the viator's exercise of
21 conversion rights arising out of a policy, if the total of the time
22 covered under the conversion policy plus the time covered
23 under the prior policy is at least twenty-four (24) months. The
24 time covered under a group policy is calculated without
25 regard to a change in insurers if the coverage has been
26 continuous and under the same group sponsorship.

27 (2) The viator submits independent evidence to the viatical
28 settlement provider that one (1) or more of the following
29 conditions have been met during the two (2) year period:

30 (A) The viator or insured has a terminal illness or chronic
31 illness.

32 (B) A final order, judgment, or decree is entered by a court
33 with jurisdiction, on the application of a creditor of the
34 viator:

- 35 (i) adjudicating the viator bankrupt or insolvent;
- 36 (ii) approving a petition seeking reorganization of the
37 viator; or
- 38 (iii) appointing a receiver, trustee, or liquidator to all or
39 a substantial part of the viator's assets.

40 (b) A viatical settlement provider shall, at the time the viatical
41 settlement provider submits a request to an insurer for verification
42 of coverage, submit to the insurer copies of:

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- 1 **(1) independent evidence described in subsection (a)(2);**
- 2 **(2) the document required by section 24(3) of this chapter;**
- 3 **and**
- 4 **(3) a letter of attestation from the viatical settlement provider**
- 5 **that the copies are true and correct copies of the independent**
- 6 **evidence and documents received by the viatical settlement**
- 7 **provider.**

8 **(c) If a viatical settlement provider submits to an insurer a copy**
 9 **of independent evidence described in subsection (a)(2) when the**
 10 **viatical settlement provider submits a request to the insurer to**
 11 **effect the transfer of a policy to the viatical settlement provider:**

- 12 **(1) the copy is considered to conclusively establish that the**
- 13 **viatical settlement contract satisfies the requirements of this**
- 14 **chapter; and**
- 15 **(2) the insurer shall timely respond to the request.**

16 **(d) A violation of this chapter is an unfair and deceptive act or**
 17 **practice in the business of insurance under IC 27-4-1-4.**

18 SECTION 45. IC 34-30-2-116.3 IS ADDED TO THE INDIANA
 19 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 20 [EFFECTIVE JULY 1, 2006]: **Sec. 116.3. IC 27-8-19.8-25.3(h)**
 21 **(Concerning the furnishing of information about a possible**
 22 **fraudulent viatical settlement act).**

23 SECTION 46. THE FOLLOWING ARE REPEALED [EFFECTIVE
 24 JULY 1, 2006]: IC 27-8-19.8-4.3; IC 27-8-19.8-9.2.

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SENATE MOTION

Madam President: I move that Senator Young R Michael be added as second author of Senate Bill 356.

STEELE

COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 356, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 25, line 11, delete "(a) This subsection applies".

Page 25, delete lines 12 through 32.

Page 25, line 33, delete "(b)".

Page 25, run in lines 11 through 33.

Page 38, delete lines 37 through 42.

Page 39, delete lines 1 through 8.

Page 39, line 9, delete "(e)" and insert "(d)".

and when so amended that said bill do pass.

(Reference is to SB 356 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 7, Nays 2.

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